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REMARKS

Claims 11, 20, 31, 35-36, and 38 are amended. The title is amended. No new matter is added by these amendments. Claims 12 and 34 are canceled without prejudice or disclaimer. Claims 1-10, 14-19, 21-22, and 28 were previously canceled without prejudice or disclaimer. Claims 11, 13, 20, 23-27, 29-33, and 35-41 are pending. By amending and canceling the claims and amending the title, applicants are not conceding that the claims are non-statutory under 35 U.S.C. 101, 102, and 103 and are not conceding that the claims are unpatentable over the reference cited by the Office Action, as the claim and specification amendments are only for the purpose of facilitating expeditious prosecution. Applicant respectfully reserves the right to pursue these and other claims in one or more continuation and/or divisional applications. Applicant respectfully requests reconsideration and allowance of all claims in view of the amendments above and the remarks that follow.

Examiner Interview

Applicant acknowledges the telephone call with the Examiner on October 31, 2007, during which the claims were discussed.

Claims 11 and 13

MPEP 2106 (II) (C) recites:

“Where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and ‘equivalents thereof’ that correspond to the recited function. In re Donaldson, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc); In re Alappat, 33 F.3d 1526, 1540, 31 USPQ2d 1545, 1554 (Fed. Cir. 1994) (en banc).”

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Applicant's specification at page 5, second full paragraph (lines 9-28) through page 6, first full paragraph (lines 1-14) recites, in pertinent part:

"The storage device 115 represents one or more mechanisms for storing data. For example, the storage device 115 may include read only memory (ROM), random access memory (RAM), magnetic disk storage media, hard disk media, floppy disk media, tape media, CD (compact disk) media, DVD (digital video disk) media, optical storage media, flash memory devices, and/or other machine-readable media. In other embodiments, any appropriate type of storage device may be used. ...

The storage device 115 includes a workload manager 126, a self-tuning program 128, and service classes 132. ... In an embodiment, the workload manager 126 includes instructions capable of executing on the processor 110 or statements capable of being interpreted by instructions executing on the processor 110 to carry out the functions as further described below with reference to Figs. 4-6. In another embodiment, the workload manager 126 may be implemented either partially or completely in hardware via logic gates and/or other appropriate hardware techniques in lieu of or in addition to a processor-based system.

...

In an embodiment, the self-tuning program 128 includes instructions capable of executing on the processor 110 or statements capable of being interpreted by instructions executing on the processor 110 to carry out the functions as further described below with reference to Figs. 3 and 7. In another embodiment, the self-tuning program 128 may be implemented either partially or completely in hardware via logic gates and/or other appropriate hardware techniques."

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Thus, the means plus function language of claims 11 and 13 may be interpreted, by way of example and not of limitation, as a storage device storing instructions that execute on a processor, as hardware, or as logic gates, all of which are physical components. Thus, claims 11 and 13 do not lack the necessary physical components, articles, or objects to constitute a machine or manufacture and are statutory under 35 U.S.C. 101.

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Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is requested. The Examiner is invited to telephone Applicant's attorney (651-645-7135) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 09-0465.

Respectfully submitted,

David G. Herbeck, et al.

By their representative,



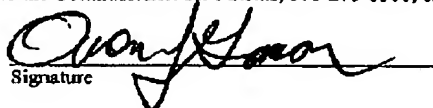
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CERTIFICATE UNDER 37 CFR 1.8: I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or is being transmitted via facsimile to the Commissioner for Patents, 571-273-8300, on October 31, 2007.

Owen J. Gamon
Name


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